

**LEGAL SERVICES CORPORATION
OFFICE OF INSPECTOR GENERAL**

APPENDIX A:

**COMPLIANCE SUPPLEMENT
FOR AUDITS OF LSC RECIPIENTS**

December 1998

Supersedes “Appendix A” contained in the Audit Guide for Recipients and Auditors (November 1996) (“Audit Guide”)

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COMPLIANCE SUPPLEMENT FOR AUDITS OF LSC RECIPIENTS

The "**Compliance Supplement for Audits of LSC Recipients**" ("Compliance Supplement") describes specific regulatory compliance requirements that apply to all recipients of funds from the Legal Services Corporation ("Corporation" or "LSC"). Compliance requirements are the responsibility of LSC management and have been provided by management for inclusion in this supplement. The requirements, if not observed, could have a direct or indirect material effect on the financial statements. Regulatory requirements relating to practice **prohibitions, restrictions and requirements** are considered to have a material impact on the LSC program (110 Stat. 1321 (1996)). Assessing compliance with these particular regulations is part of the annual audit of LSC recipients conducted under the general

guidance of Office of Management and Budget (OMB) Circular A-133 for audits of non-profit institutions.

Beginning with the 1996 appropriation of Federal funds to LSC, the recipients are required to adhere to new **prohibitions, restrictions and requirements** (Section 504(b) of 110 Stat. 1321 (1996)). Although recipient adherence to all LSC regulations is required, the regulations covering practice **prohibitions, restrictions and requirements** under the FY 1996 appropriations act carry special reporting requirements. (See Section I.9.C of the Audit Guide.) These regulations are identified in the text of the Compliance Supplement with an "*" and are as follows:

- *PART 1610 - USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION
- *PART 1612 - RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES
- *PART 1617 - CLASS ACTIONS
- *PART 1620 - PRIORITIES IN USE OF RESOURCES
- *PART 1626 - RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS
- *PART 1627 - SUBGRANTS AND DUES
- *PART 1632 - REDISTRICTING
- *PART 1633 - RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS
- *PART 1635 - TIMEKEEPING REQUIREMENT
- *PART 1636 - CLIENT IDENTITY AND STATEMENT OF FACTS
- *PART 1637 - RESTRICTIONS ON LITIGATION ON BEHALF OF A PRISONER
- *PART 1638 - RESTRICTION ON SOLICITATION
- *PART 1639 - WELFARE REFORM
- *PART 1642 - ATTORNEYS' FEES

- *PART 1643 - RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA AND MERCY KILLING
- *PART 1644 - DISCLOSURE OF CASE INFORMATION

The **special reporting requirements** (Section 509(b) of 110 Stat. 1321 (1996)) are carried out through the “**Special Report on Noncompliance with Laws and Regulations.**” The Independent Public Accountant (IPA) is to select and test a representative number of transactions and report to the recipient during the course of the audit all instances of noncompliance relating to the “*” regulations. **For purposes of the special reporting requirements only, these instances of noncompliance shall include those relating to substantive practice issues and not to procedural or administrative items.** The recipient is to then report in writing to the Office of Inspector General (OIG) within five business days the instances of noncompliance found by the auditor. If the recipient fails to notify the OIG within the specified time, the auditor must report the noncompliance directly to the OIG. (See Section II.1.H of the Audit Guide.) This process of referring the instances noted in the “**Special Report on Noncompliance with Laws and Regulations**” is referred to as the “**Five-Day Letter.**”

Overview

This Compliance Supplement is divided into three parts, A, B and C. Parts A and B have been significantly revised from the previous edition of the Compliance Supplement. Part C has been amended in certain places in an effort to provide the IPAs with additional guidance.

Part A identifies items the IPA needs to consider during the audit planning process.

Part B provides a brief overview of the new recordkeeping and regulatory requirements that were in effect for 1998. Part C identifies compliance requirements that are specific to the Corporation's grant programs, with reference to the specific Code of Federal Regulations (CFR) or statutory citations, where applicable.

Part C also provides suggested audit procedures to assist the IPA in planning and performing tests of the recipient's compliance with these requirements. IPA judgment will be necessary to determine whether the suggested audit procedures are sufficient and whether additional or alternative audit procedures are needed. Determining the nature, timing, and extent of the audit procedures necessary to meet the audit objectives is the IPA's responsibility. **If a suggested audit procedure is not performed, the IPA is to document in the workpapers the alternative procedures used to accomplish the objective. These alternative procedures will be examined during OIG quality reviews of workpapers.**

The OIG provides the suggested audit procedures as guidance to the IPAs. The procedures do not preclude the use of the IPA's professional judgment in developing additional or alternative procedures based on the conditions noted during the audit.

IPAs performing an audit using this Compliance Supplement must review the

LSC Act and regulations (including the regulations' supplementary information) to obtain an understanding of the compliance requirements. The compliance requirements summarized in this Compliance Supplement reflect those required pursuant to the respective Final Regulation published by LSC.

IPAs must recognize that laws and regulations change periodically and that delays may occur between such changes and updates to this Supplement. Furthermore, IPAs must be aware that there may be provisions of contracts and grant agreements that are unique to a particular LSC recipient. The specific requirements of any such

arrangements between the recipient and LSC are not detailed in this Supplement, but are to be identified and assessed by the IPA. Pursuant to 42 U.S.C. 2996g(b), LSC has prescribed certain specific recordkeeping requirements (by providing recipients with forms and procedures) **effective January 30, 1998.**¹

This Compliance Supplement is effective for audits of fiscal years beginning after December 31, 1997 and supersedes the previous edition of the Compliance Supplement issued in 1997.

PART A. AUDIT PLANNING CONSIDERATIONS

In order to successfully complete this audit, the IPA must review the following documents and publications.

- Regulations of the Legal Services Corporation (June 1997)
- Copies of LSC regulations published since June 1997 distributed by LSC's Office of General Counsel
- Legal Services Corporation Office of Inspector General Audit Guide for Recipients and Auditors (November 1996)
- Legal Services Corporation Office of Inspector General Audit Bulletin 97-01 (Revisions to November 1996 LSC Audit Guide for Recipients and Auditors)
- Legal Services Corporation Office of Inspector General "Audit Guide Issues Q&A (1998 Update)"
- Legal Services Corporation Office of Inspector General "READ ME FIRST...."
- Legal Services Corporation Office of Inspector General "Single Audit Clearinghouse: CFDA Number"
- Legal Services Corporation Accounting Guide for LSC Recipients (August 1997)
- Memorandum from John A. Tull, Director, Office of Program Operations, to all LSC Program Directors and Board Chairs regarding "Certification of Program Integrity" (Oct. 30, 1997)
- Memorandum from John A. Tull, Director, Office of Program Operations, to all LSC Program Directors regarding "Recordkeeping Requirements" (Dec. 8, 1997)
- Program Letter 97-1, "The Attorneys' Fees Restriction" (Aug. 7, 1997)
- Program Letter 98-5, "Case Information Disclosure--Semiannual Reports Required by 45 CFR Part 1644" (July 2, 1998)

These documents and publications should be in the possession of the recipient and be made available for use by the IPA. The OIG website, www.oig.lsc.gov and the LSC website, www.lsc.gov, also contain the majority of these documents for viewing. If you have any questions or need assistance, please call our Audit Help Line at (202) 336-8812, e-mail us at audits@oig.lsc.gov or fax us at (202) 336-8955.

The OIG routinely evaluates audits conducted by IPAs. The OIG may reject the compliance audit report and require corrective action if the quality reviews indicate the audit tests performed were inadequate. Major deficiencies in the audit that are not corrected may result in referrals to the AICPA and/or the respective state board of accountancy. Recent quality control reviews conducted by the OIG have identified deficiencies where IPAs have not adequately documented the audit work performed and conclusions reached in accordance with *Government Auditing Standards*. **The IPA's**

compliance assessment of the requirements contained in the Compliance Supplement shall be adequately documented in their workpapers evidencing the audit work performed and conclusions reached.

It is highly unlikely that the LSC recipient would be considered a “low-risk auditee” based on the criteria defined in Sections 525(b), (c) and (d) of OMB Circular A-133 (*see* Audit Bulletin 97-01; *see also* Section 530 of OMB Circular A-133). Therefore, consistent with Audit Bulletin 97-01, for purposes of the current audit period, the LSC recipient cannot be considered a “low-risk auditee”.

PART B.

NEW REQUIREMENTS FOR 1998

LSC's FY 1996 appropriations act, 110 Stat. 1321 (1996), signed into law on April 26, 1996, established new restrictions on the work that LSC recipients are allowed to do. These new restrictions and requirements were generally effective on the date of enactment. LSC's FY 1997 appropriations act, Public Law 104-208, and FY 1998 appropriations act, Public Law 105-119, continued these restrictions and requirements.

RECORDKEEPING REQUIREMENTS

By memorandum from the Director, Office of Program Operations, to all LSC Program Directors regarding "Recordkeeping Requirements" (Dec. 8, 1997) (Office of Program Operations' memo), LSC has prescribed certain specific recordkeeping requirements (by providing recipients with forms and procedures) **effective January 30, 1998. These recordkeeping requirements are mandatory.** Furthermore, the recipient must either use the sample forms provided by LSC or other forms approved by the IPA identifying the same information. The regulations impacted by these recordkeeping requirements are as follows:

- 45 CFR §1609.4 (detail of recordkeeping requirement on fee-generating cases and sample form)
- 45 CFR §1612.10 (detail of recordkeeping requirement)
Semiannual Report on Legislative and Rulemaking Activities Conducted Pursuant to 45 CFR §1612.6 (sample form)
- 45 CFR §1617.4 (detail of recordkeeping requirement on class action cases)
- 45 CFR §1620.7 (detail of recordkeeping requirement relating to priorities)
Annual Report of Non-Priority Cases pursuant to 45 CFR §1620.7(b) (sample form)
- 45 CFR §1626.12 (detail of recordkeeping requirement on citizenship or eligible alien status)
- 45 CFR §1627.8 (detail of recordkeeping requirement)
- 45 CFR §1633.4 (detail of recordkeeping requirement relating to evictions and sample form)
- 45 CFR §1636.5 (detail of recordkeeping requirement for client identity and Statement of Facts)
- 45 CFR §1637.5 (detail of recordkeeping requirement for representation of prisoners)
- 45 CFR §1642.6 (detail of recordkeeping requirement for attorneys' fees)

LSC also issued Program Letter 98-5 providing guidance as to the timing and format of the semiannual case disclosure report required by 45 CFR Part 1644. The reports must be submitted by the recipient to LSC on the sample form provided by LSC or on other forms containing the same information requested by LSC.

The IPA must ensure that all recordkeeping requirements have been met by the recipient. **The IPA's review of these requirements shall be adequately documented in their workpapers evidencing the audit work performed and conclusions reached.**

NEW REGULATIONS

LSC issued two new regulations during 1998 that have been added to the Compliance Supplement.

- **45 CFR Part 1643 Restriction on Assisted Suicide, Euthanasia, and Mercy Killing**
- **45 CFR Part 1644 Disclosure of Case Information**

LSC also issued a substantially revised regulation, **45 CFR Part 1630 Cost Standards and Procedures**, effective January 30, 1998. The revisions have been appropriately incorporated into the text currently detailed in the Compliance Supplement.

OTHER GUIDANCE ON REGULATORY COMPLIANCE

Each LSC recipient's governing body is required under 45 CFR Part 1610 to **annually certify (by December 31 of each year) that the program is in compliance with the program integrity requirements of §1610.8**. To provide guidance on the certification process and the requirements of 45 CFR Part 1610, LSC distributed a memorandum from the Director, Office of Program Operations, to all LSC Program Directors and Board Chairs regarding "Certification of Program Integrity" (Oct. 30, 1997) (Program Integrity memo). This Program Integrity memo contains the following attachments: (a) Certification of Program Integrity; (b) Guidance in Applying the Program Integrity Standards; and (c) Instructions for Certification of Program Integrity.

PART C.

COMPLIANCE REQUIREMENTS

INTRODUCTION

The specific requirements for allowable or unallowable activities are detailed in the regulations and applicable statutory provisions. In order to assist the IPA, the specific compliance requirements are provided in summary form under this part, together with audit procedures unique to the specific compliance requirement. **The compliance requirements included under this section are not the full text of the regulation or statutory provision. IPAs shall review the regulation (as published in the Code of Federal Regulations) and, if necessary, the supplementary information (as published in the Federal Register) or statutory provision in order to have a full understanding of the requirements.**

The primary objective of the audit procedures detailed in the Compliance Supplement is to ensure that the audit results provide reasonable assurance the LSC recipient complied with the LSC Act, regulations and other applicable law. Based upon OIG experience, for purposes of compliance assessment, **these procedures represent a minimum level of inquiry and testing expected to be performed by the IPA.**

SAMPLE SELECTION OF CASE FILES

The IPA shall select a representative sample of case files. The IPA is to document in the workpapers the case sampling methodology, including how the sample size was determined and the total universe of cases from which the sample was selected. The case sample shall be selected from a universe that includes:

- cases both opened and closed during the audit period;
- cases opened during a prior period and closed during the audit period;
- cases opened during a prior period and remaining open at the end of the audit period;
- cases opened during the audit period and remaining open at the end of the audit period;
- cases from the main and branch offices;
- cases representing different subject areas from different units/project groups; and
- cases with different levels of legal representation.

During this review of case files, attention shall be given to assessing compliance with the applicable requirements of 45 CFR Parts 1609, 1611, 1613, 1615, 1617, 1620, 1626, 1632, 1633, 1636, 1637, 1639, 1643, 1644 and the other statutory prohibitions identified in this Compliance Supplement.

ACCESS TO RECORDS

The IPA is within the attorney client privilege and has access to any records that, in the IPA's judgment, are necessary to complete the audit. If the recipient asserts attorney client privilege, or in any other manner attempts, to deny the IPA access to necessary documents or relevant portions thereof, **the IPA is to contact the OIG immediately.**

SPECIFIC REQUIREMENTS

1608 PROHIBITED POLITICAL ACTIVITY

LSC Regulations

45 CFR §§ 1608.3, 1608.4, 1608.5 and 1608.6

Compliance Requirement

While employed under the LSC Act, no staff attorney (as defined at 45 CFR § 1600.1) shall, at any time, (a) use official authority or influence for the purpose of interfering with or affecting the result of an election or nomination for office, whether partisan or nonpartisan; (b) directly or indirectly coerce, command or advise an employee of any recipient to pay, lend, or contribute anything of value to a political party, or committee, organization, agency or person for political purposes; or (c) be a candidate for partisan elective office (45 CFR § 1608.5). For purposes of the LSC regulations, the term "political" refers to "that which relates engendering public support for or opposition to candidates for public office, ballot measures, or political parties, and would include publicity or propaganda used for that purpose (45 CFR § 1600.1).

LSC funds, personnel or equipment cannot be used or made available to any

political party or association, to the campaign of any candidate for public or party office, or for use in advocating or opposing any ballot measure, initiative or referendum (45 CFR § 1608.3(b)).

LSC funds may not be used or made available for, and while engaged in legal assistance activities supported under the LSC Act, no attorney may engage in, any activity to provide voters with transportation to the polls or any similar assistance in connection with an election, or any voter registration activity (45 CFR §§ 1608.4(b), 1608.6).

However, these requirements do not prohibit an attorney from providing any form of legal assistance to an eligible client, and may not interfere with the fulfillment of any attorney's professional responsibilities to a client (45 CFR § 1608.7).

Suggested Audit Procedures

- Review policies or recipient practices in place to ensure that no recipient and/or employee or attorney of the recipient undertakes an activity in violation of 45 CFR §§ 1608.3(b), 1608.4, 1608.5, 1608.6, and 1608.7.
 - Determine how the recipient ensures that the policies/practices are effectively communicated to staff and whether these policies/practices are followed by staff. Interview recipient staff as to their knowledge concerning the possible existence of any political activity.
 - Determine that the recipient did not expend grant funds or contribute personnel or equipment in violation of the requirements of 45 CFR § 1608.3(b).
 - Examine expenditures for payments or contributions:
 - a) to any political party or association;
 - b) to the campaign of any candidate for public or party office; and
 - c) for use in advocating or opposing any ballot measure, initiative, or referendum.
-

1609 FEE-GENERATING CASES

LSC Regulations

45 CFR §§ 1609.2, 1609.3 and 1609.4

Compliance Requirement

Definition of a fee-generating case: any case or matter which, if undertaken on behalf of an eligible client by an attorney in private practice, reasonably may be expected to result in a fee for legal services from an award to a client, from public funds or from the opposing party (45 CFR §1609.2(a)).

Excluded from definition of fee-generating case: any case where (1) a court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, or (2) a recipient undertakes

representation under a contract with a government agency or other entity (45 CFR §1609.2(b)).

Recipients may not use Corporation or private funds to provide legal assistance in a fee-generating case unless:

- (1) the case was rejected by a local lawyer referral service or by two private attorneys; or
- (2) neither the referral service nor two private attorneys would consider the case without payment of a consultation fee (45 CFR §1609.3(a)).

Recipients may provide legal assistance in a fee-generating case without first attempting referral only when:

- (1) An eligible client is seeking benefits under Subchapter II of the Social Security Act, 42 U.S.C. 401 et seq., as amended, Federal Old Age, Survivors, and Disability Insurance Benefits; or Subchapter XVI of the Social Security Act, 42 U.S.C. 1381 et seq., as amended, Supplemental Security Income for Aged, Blind, and Disabled;
- (2) The recipient, after consultation with appropriate representatives of the private bar, has determined that the type of case is one that private attorneys in the area served by the recipient ordinarily do not accept, or do not accept without prepayment of a fee; or
- (3) The director of the recipient, or the director's designee, has determined that referral of the case to the private bar is not possible because:

- (i) Documented attempts to refer similar cases in the past generally have been futile;
- (ii) Emergency circumstances compel immediate action before referral can be made, but the client is advised that, if appropriate, and consistent with professional responsibility, referral will be attempted at a later time; or
- (iii) Recovery of damages is not the principal object of the recipient's client's case and substantial statutory

attorneys' fees are not likely to be available (45 CFR §1609.3(b)).

For requirements concerning fees in a properly undertaken fee-generating case, see 45 CFR Part 1642.

Each recipient must have written policies and procedures to guide its staff in complying with this rule and must maintain records sufficient to document the recipient's compliance with this rule (45 CFR §1609.4).

Suggested Audit Procedures

- Review the recipient's policies or practices to ensure that fee-generating cases are accepted by the recipient in accordance with the requirements of 45 CFR § 1609.
- Review whether procedures have been established for referral of fee-generating cases and evaluate whether the procedures conform to the requirements of 45 CFR § 1609.3.

- Determine how these policies or practices are communicated to staff and whether such policies/practices are followed by staff. Interview a sample of recipient staff, including intake workers, as to their knowledge concerning the possible existence of any fee-generating case that was undertaken improperly by the recipient. Follow up on all such possible occurrences to determine if the case was a fee-generating case and if representation was authorized pursuant to the regulation.
- Ensure that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997. Adequately document this assessment in the workpapers.
- As part of its recordkeeping system, the recipient shall maintain a separate file that identifies and summarizes each instance in which a fee-generating case, other than cases accepted under §1609.3(b)(2), was accepted. (LSC's sample form, provided with the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997, should be used as the summary.) Inspect this file for completeness. **If fee-generating cases were accepted by the recipient, select a sample of these cases to insure that they comply with the regulation.** Note that recipients shall establish a recordkeeping system which includes appropriate documentation in individual case files or elsewhere that indicates the basis for taking each fee-generating case, other than cases accepted under §1609.3(b)(2), including records that: (a) indicate the date when a referral was rejected by the lawyer's referral service; or (b) indicate the names of two private attorneys who rejected the referral; or (c) indicate that neither the lawyer referral service nor two named private attorneys would consider the referral without prepayment of a consultation fee; or (d) indicate that the recipient's executive director, or designee, has determined that the case cannot be referred to the private bar because one of the following circumstances exist including documentation: (1) that past attempts to refer similar cases have generally been futile; or (2) describing the emergency circumstance that compelled the recipient to take immediate action before referral could be made of a fee-generating case; or (3) that recovery of damages was not the principal object of the recipient's client's case and substantial statutory attorneys' fees are not likely to be available. **Also note** that for court-appointed cases that would otherwise be considered to be fee-generating, recipients should include in the client's file or in a central file copies of the court order directing that the recipient or employee of the recipient provide representation in the case and a copy of the statute or court rule that permits such appointment. If the appointment was made orally or was subject to an unwritten practice, the recipient should include an appropriate written description of the appointment or practice.
- If the recipient relies on §1609.3(b)(2) relating to consultation with the private bar, to accept a fee-generating case without first attempting referral, the recipient shall maintain: (a) a memorandum containing the names of appropriate representatives of the private bar with whom the recipient has discussed fee-generating cases and the bases on which the recipient has concluded that private attorneys in its service area do not accept, or do not accept without prepayment of a fee, particular types of fee-generating cases; and (b) a list of the

types of such fee-generating cases that private attorneys do not accept. Inspect this documentation for compliance with the recordkeeping requirements.

- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

***1610 USE OF FUNDS FROM SOURCES OTHER THAN THE CORPORATION**

LSC Regulations

45 CFR § 1610

Compliance Requirement

Overview

(a) LSC Act Restrictions -- Longstanding restrictions on recipients' activities are contained in the LSC Act and newer, more numerous restrictions are contained in LSC appropriations (Pub. L. 104-134, and continued by Pub. L. 104-208). LSC Act restrictions apply to LSC funds with significant extensions to private funds, but allow public, IOLTA and tribal² funds to be used for the purposes for which they are granted.

(b) Appropriations Act Restrictions -- Most of the appropriations act restrictions are "entity restrictions" forbidding recipients of LSC funds from conducting restricted activity with any funds (with a narrow exception for Indian tribal funds). Most appropriations act restrictions took effect as of April 25, 1996, although a few specific requirements have later effective dates. With a few exceptions discussed below under §1610.7, any transfer of LSC funds to another entity carries appropriations act restrictions (and LSC Act

restrictions on private funds) along with it to all of that entity's funds. Transfer of non-LSC funds does not carry restrictions along with it. Regardless of whether funds are transferred to another entity, the extent to which a recipient may share staff and facilities with another organization that conducts restricted activities is limited by the program integrity standards of §1610.8.

Specific restrictions

Use of Funds for Restricted Activities

The LSC Act restrictions are listed under the rubric of "purpose prohibited by the LSC Act" at §1610.2(a). LSC funds and private funds may not be used for these activities; but public, IOLTA or tribal funds may be so used, provided the use is consistent with the purposes for which they were provided (45 CFR §§1610.2(a), 1610.2(c), 1610.2(e), 1610.2(f), 1610.4(b)).

The appropriations act restrictions are listed under the rubric of "activity prohibited by or inconsistent with section 504" at

§1610.2(b). With exceptions discussed immediately below, no recipient funds, whether LSC or non-LSC, may be used for such activities (45 CFR §§1610.2(b), 1610.3). These exceptions are: (1) Indian tribal funds may be used for the specific purposes for which they were provided (45 CFR §§1610.2(h), 1610.4(a)); (2) restrictions governing representation in criminal proceedings and collateral attacks on criminal convictions, prisoner litigation and representation of aliens do not apply to (a) a recipient's or subrecipient's separately funded public defender program or project; or (b) criminal or related cases accepted by a recipient or subrecipient pursuant to a court appointment (45 CFR §1610.6). Both these exceptions also apply to LSC Act prohibitions discussed below (45 CFR §§1610.4(a), 1610.6).

Income Ineligible Client

A recipient may use any non-LSC funds to provide legal assistance to a financially ineligible (over-income) client, provided that the funds are used for the specific purposes for which those funds were provided and the activity is not otherwise prohibited by the LSC Act or Section 504 (45 CFR §1610.4(d)).

Contributions received from Non-LSC Sources

Except for contributions of less than \$250, no recipient may accept funds from any source other than the Corporation, unless it provides to the source of the funds written notification of the prohibitions and conditions which apply to the funds (45 CFR §1610.5).

Restrictions on Transferred Funds

If a recipient transfers LSC funds to another person or entity, the prohibitions and requirements referred to in 45 CFR §1610 apply both to the LSC funds transferred and to the non-LSC funds of the person or entity to whom those funds are transferred, except that: (1) As to the requirements of 45 CFR §1620 on priorities, the transferee shall either: (i) use the funds transferred consistent with the recipient's priorities; or (ii) establish their own priorities for the use of the funds transferred consistent with 45 CFR §1620.

(2) As to the requirements of 45 CFR §1635 on timekeeping, the transferee is required only to maintain records of time spent on each case or matter undertaken with the funds transferred and need not maintain such records in the form required by 45 CFR §1635.

(3) For a transfer of LSC funds to bar associations, *pro bono* programs, private attorneys or law firms, or other entities for the sole purpose of funding private attorney involvement activities (PAI) pursuant to 45 CFR §1614, the prohibitions or requirements of 45 CFR §1610 shall apply only to the funds transferred and not to the transferee's other funds (45 CFR §1610.7).

Program Integrity

A recipient must have objective integrity and independence from any organization that engages in restricted activities. A relationship with another organization will meet this standard if:

(1) The other organization is a legally separate entity;

(2) The other organization receives no transfer of LSC funds, and LSC funds do not subsidize restricted activities; and

(3) The recipient is physically and financially separate from the other organization. Mere bookkeeping separation of LSC funds from other funds is not sufficient. Whether sufficient physical and financial separation exists will be determined on a case-by-case basis and will be based on the totality of the facts. The presence or absence of any one or more factors will not be determinative. Factors relevant to this determination shall include but will not be limited to: (i) the existence of separate personnel; (ii) the existence of separate accounting and timekeeping records; (iii) the degree of separation from facilities in which restricted activities occur, and the extent of such restricted activities; and (iv) the extent to which signs and other forms of identification

which distinguish the recipient from the organization are present (45 CFR §1610.8(a)).

Each recipient's governing body must have certified to the Corporation by December 19, 1997 that the recipient is in compliance with the requirements of §1610.8(a). Thereafter, the recipient's governing body must certify such compliance to the Corporation on an annual basis (45 CFR §1610.8(b)).

Funds received by a recipient from a source other than the Corporation shall be accounted for as separate and distinct receipts and disbursements in a manner directed by the Corporation (45 CFR §1610.9).

Suggested Audit Procedures

- Determine how the recipient ensures compliance with this regulation. Obtain an understanding of the internal controls in place to ensure compliance with the requirements of 45 CFR § 1610. Review policies and procedures.
- Obtain an understanding as to how the restrictions are communicated to staff and whether these are adhered to by staff. Interview recipient staff as to their knowledge concerning the possible existence of any matter that may fall under the restrictions of this regulation. Follow-up on all such possible occurrences.
- Inspect the recipient's Certification of Program Integrity for the current audit period to ensure that the program is in compliance with the program integrity requirements of 45 CFR §1610.8. Review any leases, contracts, agreements, arrangements, understandings or relationships that the recipient, its staff or its board may have currently or had previously entered into with entities (organizations or individuals) engaged in restricted activities in order to ensure compliance with 45 CFR § 1610.8 and the guidance provided by LSC pursuant to the Program Integrity memo. (These entities may include individual private practitioners, law firms, not-for-profit organizations, public interest groups, etc.)
- Sample transactions (payments/transfers) with entities (organizations or individuals) that are known to be involved in restricted/ prohibited activities in order to ascertain that any such transactions comply with 45 CFR § 1610.

- Review the accounting system (chart of accounts, general ledger etc.) to ascertain whether it provides for a separation of receipts and disbursements of LSC and non-LSC funds in accordance with the requirements of 45 CFR § 1610.9.
- Review the method of allocating expenses between LSC and non-LSC funds to ascertain whether it ensures that non-LSC funds, except as permitted by 45 CFR § 1610, are not used for the prohibited activities as defined by 45 CFR § 1610.3.
- Inquire of appropriate personnel and review grant and contract agreements for non-LSC funds to determine whether activities that LSC restrictions permit to be undertaken with non-LSC funds (e.g., responding to requests of legislators or agency officials under Part 1612, payment of dues under Part 1627, etc.) may be undertaken with the particular non-LSC funds.

1611 ELIGIBILITY

LSC Regulations

45 CFR §§ 1611.3, 1611.4, 1611.5, 1611.6 and 1611.8

Compliance Requirement

Income level

Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the LSC Act (45 CFR § 1611.3(a)). Unless specifically authorized by LSC, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125 percent) of the current official Federal Poverty Income Guidelines (45 CFR § 1611.3(b)). See the Appendix to 45 CFR § 1611 for LSC's current income levels.

Recipients establish maximum annual income levels and asset ceilings for client eligibility and may not use LSC funds to represent individuals whose income exceeds the maximums unless (a) the client's gross

income is under 187.5% of poverty line, (b) the asset ceiling, if exceeded, has been waived pursuant to a policy established by the recipient's governing body, and (c) the client file includes the recipient's documentation pursuant to authorized exceptions under 45 CFR § 1611.5(b)(1), or the client is seeking legal assistance to secure benefits provided by a governmental program for the poor. The recipient must keep records as to the number of over income clients served and the factual basis for each such *exception* (45 CFR §§ 1611.3, 1611.4, 1611.6) when LSC funds are used. Please note that recipients who receive Older Americans Act (OAA) funds for the representation of senior citizens, whether or not they use LSC funds for the nonfederal

match, are not permitted to use a means test in determining eligibility of the seniors who are represented with OAA funds.

The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the LSC Act (45 CFR § 1611.5(a)). These guidelines shall be reviewed annually.

Asset ceilings

Annually, the governing body of the recipient shall establish guidelines incorporating specific and reasonable asset ceilings, including both liquid and non-liquid assets, to be utilized in determining eligibility for services (45 CFR § 1611.6(a)). The guidelines shall consider the economy of the service area and the relative cost-of-living of low-income persons so as to ensure the availability of services to those in the greatest economic and legal need. The guidelines shall be consistent with the recipient's priorities established in accordance with 45 CFR 1620 and special consideration shall be given to the

legal needs of the elderly, institutionalized, and handicapped (45 CFR § 1611.6(b)). Assets considered shall include all liquid and non-liquid assets of all persons who are resident members of a family unit, except that a recipient may exclude the principal residence of a client (45 CFR § 1611.6(c)).

Group eligibility

LSC funds can only be used to provide legal assistance to a group that is primarily composed of persons eligible for legal assistance under the Act and that has no practical means of obtaining funds to retain private counsel (45 CFR § 1611.5(c)).

Retainer Agreement

The recipient must routinely execute a retainer agreement with each client when representation commences, unless only brief advice and consultation was provided, or the situation appeared to be an emergency and a retainer agreement was executed "as soon thereafter as is practicable" (45 CFR § 1611.8).

Suggested Audit Procedures

- Obtain an understanding of the recipient's policies and procedures for ensuring compliance with 45 CFR §§ 1611.3, 1611.4, 1611.5 and 1611.6.
- Determine if the recipient has established a maximum annual income level, not in excess of 125% of the current official Federal Poverty Income Guidelines, for persons to be eligible to receive legal assistance under the LSC Act.
- Review the recipient's eligibility guidelines to ascertain whether it incorporates asset ceilings pursuant to 45 CFR § 1611.6(a).
- Review the recipient's policies or procedures relating to determination of group eligibility to ascertain whether they are consistent with 45 CFR § 1611.5(c).

- Review board minutes and resolutions to determine if the recipient's board of directors has adopted eligibility guidelines for determining the eligibility of persons seeking legal assistance under the LSC Act and whether these guidelines are consistent with provisions of the regulation in accordance with 45 CFR § 1611.5(a).
- Determine whether intake and case acceptance policies and procedures are in place to ensure that the clients served with LSC funds are eligible in accordance with the requirements of 45 CFR § 1611.
 - a. Interview appropriate recipient staff responsible for the client intake process and eligibility determination;
 - b. Perform tests to ascertain if the recipient's records/database includes all the clients receiving services during the audit period; and
 - c. Select a sample of clients (intake records) receiving services and perform tests to ascertain if the specific individuals were eligible in accordance with the compliance requirements. (This step can be performed in conjunction with the review of the sampled case files.)
- Review recipient records as to the number of clients whose income exceeded 125% of the poverty line and were authorized to be served by the recipient with LSC funds and the factual basis for each such authorization in compliance with 45 CFR § 1611.4(b). Review a sample of files of over income clients served to determine whether the factual basis for each authorization is documented and is consistent with the authorized exceptions identified in the regulation.
- Ascertain whether the recipient routinely executes a retainer agreement for each client when representation commences, except when the only service to be provided is brief advice and consultation or an emergency situation.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. This review shall determine adherence to the prescribed system. This review shall include the following components:**
 - a) Examine case files for eligibility forms and signed retainer agreements.
 - b) Review eligibility determinations to assess whether the client's reported income level was within the maximum income levels established by the recipient.
 - c) If the client's reported income level exceeded the maximum income level, determine whether the assistance provided the client was supported by non-LSC funds (45 CFR § 1611.3(e)). If LSC funds were used and the client's gross income exceeded the maximum income level, but did not exceed 187.5% of the poverty line, establish that the recipient made the determination that eligibility should be allowed on the basis of

one or more factors set forth in 45 CFR § 1611.5(b)(1); **or** the client was seeking assistance to secure benefits provided by a governmental program for the poor (45 CFR § 1611.4(a)(1) and (2)); **and** the program maintained documentation supporting the decision and the factual bases for the decision (45 CFR § 1611.4(b)).

***1612 RESTRICTIONS ON LOBBYING AND CERTAIN OTHER ACTIVITIES**

LSC Regulations

45 CFR §§ 1612.2, 1612.3, 1612.4, 1612.5, 1612.6, 1612.7, 1612.8, 1612.9, 1612.10, 1612.11

Compliance Requirement

Except as noted below, recipients shall not attempt to influence: (1) the passage or defeat of any legislation or constitutional amendment; (2) any initiative, or any referendum or any similar procedure of the Congress, any State legislature, any local council, or any similar governing body acting in any legislative capacity; (3) any provision in a legislative measure appropriating funds to, or defining or limiting the functions or authority of, the recipient or LSC; (4) the conduct of oversight proceedings concerning the recipient or LSC; (5) the issuance, amendment or revocation of any executive order; (6) or participate in any rulemaking as defined in § 1612.2(d)(1). Recipients shall not use any funds to pay for any personal service, advertisement, telegram, telephone communication, letter, printed or written matter, administrative expense, or related expense, associated with an activity prohibited in (1)--(6) detailed above (45 CFR § 1612.3).

Recipients shall not engage in any grassroots lobbying activity as defined in 45 CFR § 1612.2(a)(1) (45 CFR § 1612.4).

Recipients and their employees may use non-LSC funds to respond to a written request from a governmental agency or official thereof, elected official, legislative body, committee, or member thereof made to the employee, or to a recipient to: (1) testify orally or in writing; (2) provide information which may include analysis of or comments upon existing or proposed rules, regulations or legislation, or drafts of proposed rules, regulations or legislation; (3) testify before or make information available to commissions, committees or advisory bodies; or (4) participate in negotiated rulemaking under the Negotiated Rulemaking Act of 1990, 5 U.S.C. §561, *et seq.*, or comparable State or local laws (45 CFR § 1612.6(a)). Communications made in response to these requests may be distributed only to the party or parties that make the request or to other persons or entities only to the extent that such distribution is required to comply with the request (45 CFR § 1612.6(b)). The request from any official to testify or otherwise provide information in connection with legislation or rulemaking may not be solicited or arranged by an employee of the recipient (45 CFR § 1612.6(c)).

Recipients may use non-LSC funds (1) to provide oral or written comment to an agency and its staff in a public rulemaking proceeding (2) to contact or communicate with, or respond to a request from a state or local government agency, a state or local legislative body or committee, or a member thereof, regarding funding for the recipient, including a pending or proposed legislative or agency proposal to fund such recipient (45 CFR §§1612.6(e), 1612.6(f)).

No person shall during working hours, while providing legal assistance or representation to the recipient's clients or while using recipient resources provided by the Corporation, participate in any public demonstration, picketing, boycott, or strike, except as permitted by law in connection with the employee's own employment situation or encourage, direct, or coerce others to engage in such activities. No employee of a recipient shall at any time engage in or encourage others to engage in any (1) rioting or civil disturbance; (2) activity determined by a court to be in violation of an outstanding injunction of any court of competent jurisdiction; or (3) other illegal activity that is inconsistent with an employee's responsibilities under applicable law, LSC regulations, or the rules of professional responsibility of the jurisdiction where the recipient is located or the employee practices law (45 CFR § 1612.7).

A recipient may not support or conduct training programs that: (1) advocate particular public policies; (2) encourage or facilitate political activities, labor or anti-labor activities, boycotts, picketing, strikes or demonstrations, or the development of strategies to influence legislation or rulemaking; (3) disseminate information about such policies or activities; or (4) train participants to engage in activities

prohibited by the LSC Act, other applicable law, or Corporation regulations, guidelines or instructions. A recipient is not prohibited from training attorneys or paralegals, clients, lay advocates, or others involved in the representation of eligible clients necessary for preparing them: (1) to provide adequate legal assistance to eligible clients; or (2) to provide advice to any eligible client as to the legal rights of the client (45 CFR § 1612.8).

No funds made available by LSC or by private entities may be used to initiate the formation, or to act as an organizer, of any association, federation, labor union, coalition, network, alliance, or any similar entity (45 CFR § 1612.9(a)). This provision does not apply to organizations composed exclusively of eligible clients formed for the purpose of advising a legal services program about the delivery of legal services. Recipients may provide legal assistance to eligible clients who desire to set up organizations, such as by preparing articles of incorporation and bylaws.

A recipient may initiate or participate in litigation challenging agency rules, regulations, guidelines or policies, unless such litigation is otherwise prohibited by law or LSC regulations (45 CFR § 1612.5(b)).

The following requirements apply to legislative and rulemaking activities under 45 CFR 1612.6: (1) Recipients shall maintain copies of all written requests received by the recipient and written responses made in response thereto and make such requests and written responses available to monitors and other representatives of the Corporation upon request; (2) no funds made available by the Corporation shall be used to pay for administrative overhead or related costs associated with any activity listed in §1612.6;

(3) recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by §1612.6; and (4) recipients shall submit semi-annual reports describing their legislative activities with non-LSC funds conducted pursuant to §1612.6, together with such supporting documentation as specified by

the Corporation (45 CFR §§1612.6(d), 1612.10(a), 1612.10(b), 1612.10(c)).

Recipients must have written policies and procedures to guide their staff in complying with this part (45 CFR § 1612.11).

Suggested Audit Procedures

- Determine that policies and procedures are in place to ensure that the recipient does not undertake an activity in violation of 45 CFR § 1612.
- Determine how the recipient ensures that the policies/procedures are effectively communicated to staff and that these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any matter that may fall under the requirements of this regulation. Follow up on all such possible occurrences.
- Ensure that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997. Adequately document this assessment in the workpapers.
- Inspect written requests from a governmental agency or official, elected official, legislative body, committee, or member thereof made to an employee, or to a recipient and copies of any written responses. Ascertain compliance with §1612.6.
- Inspect the list maintained by the recipient of the registered lobbyists employed by the recipient. Discuss with these individuals any activities undertaken by them in order to ensure compliance in accordance with this Part.
- Verify whether the recipient maintains separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by 45 CFR § 1612.6.
- Test expenditures for allowability pursuant to Part 1612. Evaluate supporting documentation and cost allocation methods for adequate recordkeeping and accuracy of the amounts reported.
- Review the recipient's semi-annual reports together with supporting documentation and determine whether the reported activities comply with the regulation. (LSC has provided a sample report form with the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997.)

- Review a sample of permissible activities conducted by the recipient using any funds (45 CFR § 1612.5) and those using non-LSC funds (45 CFR § 1612.6), including the recordkeeping system in place, in order to determine compliance with the respective provisions. (Auditors should review the documentation required pursuant to 45 CFR § 1612.10(b) for permitted activities with non-LSC funds. Note that in accordance with § 1612.10(b), recipients shall maintain separate records documenting the expenditure of non-LSC funds for legislative and rulemaking activities permitted by § 1612.6.)
- In assessing compliance with 45 CFR § 1612.4, interview appropriate staff as to whether the recipient engaged in any grassroots lobbying.
- Interview appropriate staff as to whether any person, while employed under the Act and while using resources provided by LSC or private entities (either directly or through a subrecipient), participated in public demonstrations or engaged in specific activities detailed under 45 CFR § 1612.7.
- Interview appropriate staff as to whether the recipient conducted or supported training for staff attorneys and paralegals in accordance with 45 CFR § 1612.8.

1613 RESTRICTIONS ON LEGAL ASSISTANCE WITH RESPECT TO CRIMINAL PROCEEDINGS

LSC Regulations

45 CFR §§ 1613.3 and 1613.4

Compliance Requirement

LSC funds shall not be used to provide legal assistance with respect to a criminal proceeding unless authorized by this regulation (45 CFR § 1613.3).

Legal assistance may be provided with respect to a criminal proceeding under the following circumstances: (a) pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's primary

responsibility to provide legal assistance to eligible clients in civil matters; or (b) when professional responsibility requires representation in a criminal proceeding arising out of a transaction with respect to which the client is being, or has been, represented by a recipient (45 CFR § 1613.4).

Recipients are permitted to use public funds under certain circumstances for criminal representation and are permitted to use private funds for criminal representation provided under a separately funded public defender

program or project. They are also permitted to undertake court appointments in criminal

cases and to use non-LSC funds for the representation (45 CFR § 1610.6).

Suggested Audit Procedures

- Obtain an understanding of the policies, practices and internal controls in place to ensure compliance with the requirements of 45 CFR § 1613.
- Determine how the recipient ensures that the restrictions are effectively communicated to staff and that these procedures are followed in practice by staff. Interview recipient staff as to their knowledge concerning the possible existence of any attorney representation of a client that may be prohibited by this regulation. Follow up on all such possible occurrences.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

1614 PRIVATE ATTORNEY INVOLVEMENT (PAI)

LSC Regulations

45 CFR §§ 1614.1, 1614.3 and 1614.5

Compliance Requirement

A recipient of LSC funding is required to devote an amount of LSC and/or non-LSC funds equal to at least 12.5% of the recipient's LSC annualized basic field award for the involvement of private attorneys in the delivery of legal assistance to eligible clients. The recipient is to demonstrate compliance with this Part by using financial systems and procedures and maintaining supporting documentation to identify and account separately for costs related to the PAI effort.

Activities undertaken by the recipient to meet the requirements of this part must include the direct delivery of legal assistance to

eligible clients through programs such as organized pro bono plans, reduced fee plans, judiciary panels, private attorney contracts, or modified pro bono plans which provide for the payment of nominal fees by eligible clients and/or organized referral systems (45 CFR § 1614.3(a)).

The specific methods to be undertaken by a recipient to involve private attorneys in the provision of legal assistance to eligible clients are to be determined by the recipients taking into account the following factors: (1) the priorities established pursuant to Part 1620; (2) the effective and economic delivery

of legal assistance to eligible clients; (3) the linguistic and cultural barriers to effective advocacy; (4) the actual or potential conflicts of interest between specific participating attorneys and individual eligible clients; and (5) the substantive and practical expertise, skills, and willingness to undertake new or unique areas of the law of participating attorneys (45 CFR § 1614.3(c)).

Systems designed to provide direct services to eligible clients by private attorneys on either a pro bono or reduced fee basis, shall include at a minimum, the following components: (1) intake and case acceptance procedures consistent with the recipient's established priorities in meeting the legal needs of eligible clients; (2) case assignments which ensure the referral of cases according to the nature of the legal problems involved and the skills, expertise, and substantive experience of the participating attorney; (3) case oversight and follow-up procedures to ensure the timely disposition of cases to achieve, if possible, the

result desired by the client and the efficient and economical utilization of recipient resources; and (4) access by private attorneys to LSC recipient resources (45 CFR § 1614.3(d)).

The recipient shall develop a plan and budget to meet the requirements of this regulation which shall be incorporated as part of the refunding application or initial grant application (45 CFR § 1614.4(a)). The recipient shall consult with significant segments of the client community, private attorneys, and bar associations, in the recipient's service area in the development of its annual plan to provide for the involvement of private attorneys in the provision of legal assistance to eligible clients and shall document that each year its proposed annual plan has been presented to all local bar associations within the recipient's service area and shall summarize their response (45 CFR § 1614.4(b)).

Suggested Audit Procedures

- Obtain an understanding of the policies and procedures in place to ensure that cost allocated to PAI meet the requirements of 45 CFR § 1614.3(e).
- Review the accounting systems and procedures used to identify and account separately for costs related to the PAI effort in order to determine their consistency with 45 CFR § 1614.3(e). Verify that any applicable supplementary schedules to the audited financial statements reflect proper separate reporting of PAI expenses.
- Review records of PAI expenses. Assess whether the recipient has satisfied the 12.5 % requirement for PAI expenditures.
- Review and test support for PAI allocations to ensure that recordkeeping requirements are met.

- Determine compliance with 45 CFR § 1614.3 by reviewing the recipient's PAI activities and interviewing the intake staff (or other appropriate staff, such as the PAI coordinator) regarding the referral process to private attorneys.
- Obtain from the recipient the list of private attorneys who have received compensation for cases during the review period. Contact a sample of private attorneys to confirm that the compensated cases were allowable under the LSC Act, regulations and other applicable law.

1615 RESTRICTIONS ON ACTIONS COLLATERALLY ATTACKING CRIMINAL CONVICTIONS

LSC Regulations

45 CFR §§ 1615.2 and 1615.3

Compliance Requirement

LSC funds shall not be used to provide legal assistance in an action in the nature of habeas corpus collaterally attacking a criminal conviction if the action (a) is brought against an officer of a court, a law enforcement official, or a custodian of an institution for persons convicted of crimes; and (b) alleges that the conviction is invalid because of any alleged acts or failures to act by an officer of a court or a law enforcement official (45 CFR § 1615.2).

This regulation does not prohibit legal assistance: (a) to challenge a conviction resulting from a criminal proceeding in which

the defendant received representation from a recipient pursuant to LSC regulations; or (b) pursuant to a court appointment made under a statute or a court rule or practice of equal applicability to all attorneys in the jurisdiction, if authorized by the recipient after a determination that it is consistent with the recipient's primary responsibility to provide legal assistance to eligible clients in civil matters (45 CFR § 1615.3).

See discussion under summary Part 1613 regarding use of non-LSC funds.

Suggested Audit Procedures

- Obtain an understanding of the policies, practices and internal controls in place to ensure compliance with the requirements of 45 CFR § 1615.
- Determine how the recipient ensures that the restrictions are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any representation

of a client that may be prohibited by this regulation. Follow up on all such possible occurrences. If such matters have been handled by the recipient, determine whether LSC funds were used to support these activities.

- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

***1617 CLASS ACTIONS**

LSC Regulations

45 CFR §§ 1617.2, 1617.3, 1617.4

Compliance Requirement

After April 25, 1996, recipients are prohibited from using any funds to initiate or participate in any class action at any stage, other than (1) non-adversarial activities including efforts to remain informed about, to explain, clarify, educate or advise others about the terms of an order granting relief, (2) representation of individual clients seeking to opt out from a class, or (3) individual representation of a client seeking to obtain the benefit of relief ordered by the court.³ A class action is any lawsuit filed pursuant to Rule 23 of the Federal Rules of Civil Procedure or

comparable State statute or rule of civil procedure applicable in the court in which the action is filed (45 CFR §§ 1617.2, 1617.3). The definition of a class action does not include a mandamus action or injunctive or declaratory relief actions, unless such actions are filed or certified as class actions.

Recipients must have written policies and procedures to guide their staff in ensuring compliance with this rule (45 CFR § 1617.4).

Suggested Audit Procedures

- Obtain an understanding of the recipient's written policies and procedures for ensuring compliance with 45 CFR § 1617 and ascertain whether such policies and procedures are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the policies and procedures are communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the prohibition. Follow up on all such possible occurrences.

- Ensure that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997. Adequately document this assessment in the workpapers.
 - Obtain the list of class action cases maintained by the recipient where the recipient or recipient attorney is attorney of record and is involved in non-adversarial activities. This list should contain the case name; the court; and the status of the case, including a description of the non-adversarial activities. **Verify, by physical inspection of the respective case file, that each case contained on the list complies with Part 1617.**
 - Be alert for continuing involvement in prohibited case activity reported by the recipient to LSC as having been fully divested.
 - a. Inquire of class action cases retained by the recipient pursuant to the exceptions identified in the compliance requirement detailed above. Ascertain the type of activity undertaken on these cases and the related time expended on these cases. Evaluate whether the activities engaged in complied with 45 CFR § 1617.3. (Recipients may continue to participate in class actions filed prior to April 26, 1996, for the limited purpose of seeking attorneys' fees for recipient activity conducted in those cases prior to August 1, 1996.)
 - b. Review timekeeping records for any time spent during the audit period on cases identified as class actions. Follow up to determine compliance with the regulation.
 - **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**
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***1620 PRIORITIES IN USE OF RESOURCES**

LSC Regulations

45 CFR §§ 1620.3, 1620.4, 1620.5, 1620.6, 1620.7

Compliance Requirement

The recipient's governing body must adopt procedures for establishing priorities for the use of all its LSC and non-LSC resources and must adopt a written statement of priorities, pursuant to those procedures, that determines the cases and matters which are to be undertaken by the recipient (45 CFR § 1620.3(a)). The recipient's governing body must have adopted written policies and procedures for undertaking emergency cases or matters (as defined in § 1620.4) that are not within the recipient's priorities (45 CFR § 1620.4).

All staff who handle cases or matters, or make decisions about case acceptance, must have signed a simple agreement, developed by the recipient, indicating that the signatory: (a) has read and understands the priorities established by the recipient's governing body; (b) has read and understands the definition of an emergency situation and the recipient's procedures for dealing with an emergency that falls outside of the recipient's priorities; and (c) will not undertake any case or matter for

the recipient that is not a priority or an emergency (45 CFR § 1620.6).

The recipient must periodically set priorities and its governing body must annually review the priorities or more frequently if the recipient has accepted a significant number of emergency cases (45 CFR § 1620.5(a)). The recipient must report to its governing body quarterly and to LSC annually information on all emergency cases or matters undertaken by the recipient that were not within the recipient's priorities (45 CFR §§ 1620.7(a) and (b)).

The recipient must submit to LSC and make available to the public an annual report summarizing the review of priorities; the date of the most recent appraisal; the timetable for the future appraisal of needs and evaluation of priorities; mechanisms which will be utilized to ensure effective client participation in priority-setting; and any changes in priorities (45 CFR § 1620.7(c)).

Suggested Audit Procedures

- Review activity of the recipient's governing body to determine if it has adopted written procedures for establishing priorities in the use of recipient LSC and non-LSC resources and whether it has adopted a written statement of priorities that determines the cases and matters to be undertaken by the recipient.

- Review activity of the recipient's governing body to determine if it has adopted written policies and procedures for undertaking emergency cases or matters not within the recipient's established priorities pursuant to 45 CFR § 1620.4.
- Review the minutes of board meetings to determine whether priorities are set periodically and reviewed by the governing body of the recipient at least annually. (Note that a recipient may maintain separate priorities for each office or for a particular segment of the service area.)
- Determine how the recipient ensures that the policy and procedures are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview recipient staff responsible for the client intake process as to their knowledge of recipient priorities. Identify all staff who handle cases or matters or make decisions about case acceptance and review their signed written agreements not to undertake non-priority cases or matters except for those that are emergencies, in accordance with 45 CFR § 1620.6. (Note that this agreement must indicate that the signatory: has read and is familiar with the priorities of the recipient; has read and is familiar with the definition of an emergency situation and the procedures for dealing with an emergency that have been adopted by the recipient; and will not undertake any case or matter for the recipient that is not a priority or an emergency.)
- Ensure that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997. Adequately document this assessment in the workpapers.
- Assess compliance with Sections 1620.7(a) and (b). Review board minutes or written documents indicating that quarterly reports were sent or presented to the recipient's governing body on all emergency cases or matters undertaken that were not within the recipient's priorities. Review board minutes or written documents indicating the quarterly reports included a rationale for undertaking each such case or matter and copies of any written documents accompanying the reports. Review the Annual Report of Non-Priority Cases that includes information on all emergency cases or matters undertaken that were not within the recipient's priorities. Obtain an understanding of how the recipient gathers and processes this information for purposes of completing this annual report. **Document this understanding in the workpapers.**
- In conjunction with the review of case files, determine whether the subject matter of these cases falls within the written priorities of the recipient. This determination shall be limited to cases undertaken after the date when the recipient adopted new written priorities pursuant to the requirements of interim regulation Part 1620, or after September 28, 1996, whichever is earlier.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

- Review a sample of program activities falling within the category of “matters” to determine whether the activity falls within the written priorities of the recipient. For purposes of assessing compliance with Part 1620, this review shall be limited to matters undertaken after the date when the recipient adopted new written priorities pursuant to the requirements of interim regulation Part 1620, or after September 28, 1996, whichever is earlier.
- Review the annual report to determine if it contains the provisions required by 45 CFR § 1620.7(c).

***1626 RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS**

LSC Regulations

45 CFR §§ 1626.2, 1626.3, 1626.4, 1626.5, 1626.7, 1626.8, 1626.9, 1626.10, 1626.11, and 1626.12

Compliance Requirement

After April 25, 1996, a recipient may not use any funds to provide legal services for or on behalf of an ineligible alien beyond normal intake and referral services, except for use of non-LSC funds to represent ineligible aliens who are battered or subjected to extreme cruelty (45 CFR §§ 1626.3, 1626.4, 1626.5). Alien status and eligibility are defined at 45 CFR §1626.5.

Except when the only service is brief advice and telephone consultation, a citizen seeking representation must attest in writing in an LSC approved form to the fact of his or her United States citizenship (45 CFR §1626.6(a)). Verification of citizenship shall not be required unless a recipient has reason to doubt that a person is a United States citizen (45 CFR §1626.6(b)). Factors such as accent, race or national origin may not be considered as a reason to doubt citizenship.

Except when the only service is brief advice and telephone consultation, an alien seeking representation must submit appropriate documents, including but not limited to those listed in the Appendix to 45 CFR 1626, to verify eligibility. In an emergency, legal services may be provided prior to compliance with all the requirements of §1626.6 for a citizen or §1626.7 for an alien if the requirements of §1626.8 are satisfied.

Recipients must have written policies and procedures to guide their staff in complying with this part and shall maintain records sufficient to document the recipient’s compliance with this part (45 CFR § 1626.12).

Recipients may provide criminal and related representation to ineligible aliens in court appointments or as part of a separately funded public defender project or program.

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with the requirements of 45 CFR § 1626 and ascertain whether the recipient's written policies and procedures are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the policies and procedures are communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the restrictions. Follow up on all such possible occurrences.
- Ensure that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997. Adequately document this assessment in the workpapers.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate casehandler,** inspect the citizenship attestation statement signed by the client (or, if applicable, the recipient's documentation supporting a determination of eligible alien status) contained in the case file to determine compliance with 45 CFR § 1626.6 . **Adequately document this assessment in the workpapers.** Where compliance with §§1626.6 or 1626.7 is delayed because of emergency circumstances under §1626.8, the recipient shall include in the client's file written documentation that details the nature of the emergency, in accordance with the mandatory recordkeeping requirements.

*1627 SUBGRANTS AND DUES

LSC Regulations

45 CFR §§ 1627.2, 1627.3, 1627.4, 1627.6, 1627.8

Compliance Requirement

LSC funds may not be transferred to another entity for the purpose of conducting any of the recipient's programmatic activities without prior LSC approval of a subgrant, unless the transfer is an amount less than \$25,000 paid to a private attorney or law firm for the provision of legal assistance to eligible clients, or is an amount paid for the provision

of goods and services by vendors, consultants, or professionals (45 CFR § 1627.2).

With regard to subgrants of LSC funds, recipients must ensure that subrecipient(s) comply with the financial and audit requirements of LSC, specifically including those regarding the proper expenditure of, accounting for, and audit of,

delegated funds (45 CFR § 1627.3(c)). Funds of a subrecipient remaining at the end of the grant period must be included in the recipient's fund balance (45 CFR § 1627.3(b)(1)). The requirements of § 1627.3 also apply to all subgrants by one recipient to another recipient (45 CFR § 1627.6(a)).

After April 25, 1996, recipients may not use Corporation funds to pay dues to any private or nonprofit organization other than dues mandated as a requirement of practicing a profession by a governmental organization,

but non-LSC funds may be used to pay such dues (45 C.F.R. §1627.4).

Recipients may not make any contributions or gifts of LSC funds to another organization or to an individual (45 CFR § 1627.5).

Recipients must have written policies and procedures to guide their staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part (45 CFR § 1627.8).

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place for ensuring compliance with this regulation and for ensuring that subrecipients comply with the LSC Act, regulations, grant agreements and subgrant agreements.
- Identify all subgrants using LSC funds and determine if prior written approval for the subgrants was obtained from LSC.
- Discuss subrecipient oversight with the recipient's staff to gain an understanding of the scope of these activities, including the number, size, and complexity of awards to subrecipients.
- Review the recipient's documentation of subrecipient oversight to ascertain if the recipient ensured that subrecipients used LSC funds for authorized purposes and in accordance with subgrant agreements.
- Determine whether LSC funds transferred to organizations or private attorneys comply with the requirements of 45 CFR § 1627.
- Determine whether LSC funds were used to pay dues or contributions in violation of 45 CFR §§ 1627.4 and 1627.5 by testing expenditures for payments made with LSC funds.
- Verify whether LSC funds received by the recipient from another recipient were properly accounted for in accordance with the requirements of 45 CFR § 1627.6.

1628 RECIPIENT FUND BALANCES

LSC Regulations

45 CFR §§ 1628.1, 1628.2(a), 1628.3, 1628.4(c) and (e), and 1628.5(a) and (c)

Compliance Requirement

Without prior Corporation approval, a recipient may not use LSC funds to liquidate a deficit in the LSC fund from a prior year (45 CFR § 1628.5).

Without prior Corporation approval, a recipient may not expend LSC funds carried over from one year to the next in excess of 10% of LSC "support." For these purposes, Corporation "support" includes annualized

Corporation grant awards plus additional income (a) derived from a Corporation grant, such as interest and rents, and (b) the proportion attributable to any LSC grant of any reimbursement or recovery of direct payments to attorneys, proceeds from the sale of assets or other compensation or income (45 CFR § 1628.2(a)).

Suggested Audit Procedures

- Calculate the recipient's prior year-end LSC fund balance and determine if the amount exceeded 10% of its annualized support (as defined in 45 CFR §1628.2(a)). If so, determine if the recipient requested and received a waiver for the 10% ceiling or repaid LSC the fund balance amount in excess of 10% if no waiver was received.
- Verify that income derived from an LSC grant (including interest and rents), and the proportion attributable to any LSC grant of any reimbursement or recovery of direct payments to attorneys, proceeds from the sale of assets or other compensation or income has been properly allocated to the LSC fund as support.
- Determine whether excess fund balance amounts approved by LSC for carryover were expended in accordance with the waiver granted.
- Ensure that the excess fund balance amount approved for expenditure is separately reported in the current year audited financial statements.
- Determine that LSC one-time grants have been accounted for separately as required by 45 CFR §1628.3(e). Test expenditures associated with LSC one-time grants and evaluate whether the expenditures were consistent with the purpose for which the funds were granted.

1630 COST STANDARDS AND PROCEDURES

LSC Regulations

45 CFR 1630

Compliance Requirement

The LSC Act, the annual appropriations acts, and the Corporation's rules, regulations, and guidelines, including the 1997 Accounting Guide for LSC Recipients, establish the relevant cost principles for testing compliance under this Compliance Supplement. This regulation is intended to provide uniform standards for allowability of costs.

The standards governing allowability of costs under LSC grants or contracts are set out in 45 CFR §1630.3. Expenditures by a recipient are allowable under the recipient's grant or contract only if the recipient can demonstrate that the cost was: (1) actually incurred in the performance of the grant or contract and the recipient was liable for payment; (2) reasonable and necessary for the performance of the grant or contract as approved by LSC; (3) allocable to the grant or contract; (4) in compliance with the Act, applicable appropriations law, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law; (5) consistent with accounting policies and procedures that apply uniformly to both LSC financed and other activities of the recipient; (6) accorded consistent treatment over time; (7) determined in accordance with generally accepted accounting principles; (8) not included as a cost or used to meet cost sharing or matching

requirements of any other federally financed program, unless the agency whose funds are being matched determines in writing that LSC funds may be used for federal matching purposes; and (9) adequately and contemporaneously documented in business records accessible to organizations authorized to conduct audits of recipients. *See* 45 CFR §§1630.3(a) and (b).

A cost is allocable to a particular cost objective, such as a grant, project, service, or other activity, in accordance with the relative benefits received. Costs may be allocated to LSC funds either as direct or indirect costs in accordance with this section. A cost is allocable to an LSC grant or contract if it is treated consistently with other costs incurred for the same purpose in like circumstances and if it: (1) is incurred specifically for the grant or contract; (2) benefits both the grant or contract and other work and can be distributed in reasonable proportion to the benefits received; or (3) is necessary to the overall operation of the recipient, although a direct relationship to any particular cost objective cannot be shown. *See* 45 CFR §§1630.3(c)-(h).

Without prior written approval of the Corporation, no cost attributable to any of the following may be charged to LSC funds: (1) pre-award costs and costs incurred after the cessation of funding; (2) purchases and leases

of equipment, furniture, or other personal, non-expendable property, if the current purchase price of any individual item of property exceeds \$10,000 ; (3) purchases of real property; and (4) capital expenditures exceeding \$10,000 to improve real property. *See* 45 CFR §1630.5(b).

Derivative income resulting from an activity supported in whole or in part with funds provided by the Corporation shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the activity (45 CFR §1630.12(a)). Derivative income which is allocated to the LSC fund in accordance with §1630.12(a) is subject to the requirements of this part, including the requirement that expenditures of

such funds be in compliance with the Act, applicable appropriations laws, Corporation rules, regulations, guidelines, and instructions, the Accounting Guide for LSC Recipients, the terms and conditions of the grant or contract, and other applicable law (45 CFR §1630.12(b)).

No costs attributable to a purpose prohibited by the LSC Act, as defined by 45 CFR §1610.2(a), may be charged to private funds, except for tribal funds used for the specific purposes for which they were provided. No cost attributable to an activity prohibited by or inconsistent with Section 504, as defined by 45 CFR §1610.2(b), may be charged to non-LSC funds, except for tribal funds used for the specific purposes for which they were provided (45 CFR §1630.11(a)).

Suggested Audit Procedures

- Obtain an understanding of the policies, practices and internal controls in place to ensure that costs charged to the LSC grant, and activities undertaken with non-LSC funds, are allowable pursuant to the LSC Act and regulations. Test a sample of transactions for conformance with the standards governing allowability of costs under §§1630.3(a)-(h) including:
 - a. Costs approved by LSC, if necessary;
 - b. Costs conform with the allowability of costs provisions pursuant to applicable cost principles or limitations contained in the LSC grant award, LSC regulations or LSC statutory provisions;
 - c. Costs represent charges for actual costs, not budgeted or projected amounts;
 - d. Costs are given consistent accounting treatment within and between accounting periods;
 - e. Costs calculated in conformity with generally accepted accounting principles; and
 - f. Costs are supported by appropriate documentation (such as approved purchase orders, receiving reports, vendor invoices, canceled checks, and time records) and correctly charged as to account, amount, and period.
- Confirm that prior approval by LSC had been obtained for the use of LSC funds for (1) pre-award costs and costs incurred after the cessation of funding; (2) purchases and leases of equipment, furniture, or other personal, non-expendable property, if the current purchase

price of any individual item of property exceeds \$10,000 ; (3) purchases of real property; and (4) capital expenditures exceeding \$10,000 to improve real property (45 CFR § 1630.5(b)).

- Confirm that prior approval by LSC had been obtained for the use of LSC funds for private attorney contracts in excess of \$25,000 (45 CFR § 1627.2(b)(1)).
- Verify that derivative income resulting from an activity supported with LSC funds is allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the activity (45 CFR §1630.12(a)).

***1632 REDISTRICTING**

LSC Regulations

45 CFR §§ 1632.2, 1632.3, 1632.4

Compliance Requirement

After April 25, 1996, recipients shall not make available any funds, personnel, or equipment for use in advocating or opposing any plan or proposal, or represent any party or participate in any other way in litigation related to redistricting.⁴ This does not prohibit any litigation brought by a recipient under the Voting Rights Act of 1965, as amended, 42

U.S.C. 1971 et seq., provided such litigation does not involve redistricting (45 CFR §§ 1632.2, 1632.3).

Recipients must have written policies to implement the requirements of this part (45 CFR § 1632.4).

Suggested Audit Procedures

- Obtain an understanding of the written policies in place to ensure compliance with the requirements of 45 CFR § 1632 and ascertain whether the recipient's policies are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the policies are effectively communicated to staff. Interview recipient staff as to their knowledge concerning the possible existence of any matter falling under the restrictions of this regulation. Follow-up on all such possible occurrences.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

***1633 RESTRICTION ON REPRESENTATION IN CERTAIN EVICTION PROCEEDINGS**

LSC Regulations

45 CFR §§ 1633.2, 1633.3, 1633.4

Compliance Requirement

After April 25, 1996, recipients may not defend any person in a proceeding to evict that person from a public housing project if: (a) the person has been charged with or has been convicted of the illegal sale, distribution, or manufacture of a controlled substance, or possession of a controlled substance (as defined in §102 of the Controlled Substances Act (21 U.S.C. §802)) with the intent to sell or distribute; and (b) the eviction proceeding is brought by a public housing agency on the basis that the illegal drug activity for which the

person has been charged or for which the person has been convicted threatens the health or safety of other tenants residing in the public housing project or employees of the public housing agency (45 CFR §§1633.2, 1633.3).

Recipients must have written policies and procedures to guide their staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part (45 CFR § 1633.4).

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with this regulation and ascertain whether the recipient's written policies and procedures are consistent with the provisions of this regulation.
- Determine how the recipient ensures that the written policies and procedures are effectively communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the prohibition of this section. Follow-up on all such possible occurrences.
- Ensure that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997. Adequately document this assessment in the workpapers.
- Obtain the list maintained by the recipient of all cases which involve an eviction from public housing where there is an allegation of drug sale, distribution or manufacture, or possession

with intent to sell or distribute. **Verify, by physical inspection of the respective case file, that each case contained on the list complies with Part 1633. Note that in each clients' case file, the recipient shall maintain documentation which demonstrates why the representation is permissible.** (LSC has provided a sample form to be included in each case file involving these issues. The sample form is attached to the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997.)

- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**

[Note: Legal Services Corporation Timekeeping Guide (April, 1996) has been prepared for LSC recipients.]

***1635 TIMEKEEPING REQUIREMENT**

LSC Regulations

45 CFR §§ 1635.1, 1635.2 and 1635.3

Compliance Requirement

All recipients of LSC funds are required to account for the time spent on all cases, matters, and supporting activities by their attorneys and paralegals, whether funded by LSC or by other sources.

As used in this part, 45 CFR § 1635.2 provides the following definitions: (a) A "case" is a form of program service in which an attorney or paralegal of a recipient provides legal services to one or more specific clients, including, without limitation, providing representation in litigation, administrative proceedings, and negotiations, and such actions as advice, providing brief services and transactional assistance, and assistance with individual PAI cases. (b) A "matter" is an action which contributes to the overall delivery of program services but does not involve

direct legal advice to or legal representation of one or more specific clients. Examples of matters include both direct services, such as community education presentations, operating pro se clinics, providing information about the availability of legal assistance, and developing written materials explaining legal rights and responsibilities; and indirect services, such as training, continuing legal education, general supervision of program services, preparing and disseminating desk manuals, PAI recruitment, intake when no case is undertaken, and tracking substantive law developments. (c) A "supporting activity" is any action that is not a case or matter, including management and general, and fundraising.

All expenditures of funds for recipient actions are, by definition, for cases, matters, or

supporting activities. The allocation of all expenditures must be carried out in accordance with 45 CFR Part 1630 (45 CFR § 1635.3(a)).

Time spent by attorneys and paralegals must be documented by time records which record the amount of time spent on each case, matter, or supporting activity (45 CFR § 1635.3(b)). Time records must be created contemporaneously and account for time in increments not greater than one-quarter of an hour which comprise all of the efforts of the attorneys and paralegals for which compensation is paid (45 CFR § 1635.3(b)(1)). Each record of time spent must contain: for a case, a unique client name or case number; for

matters or supporting activities, an identification of the category of action on which the time was spent (45 CFR § 1635.3(b)(2)).

The timekeeping system must have been implemented by May 31, 1996 or within 30 days of the effective date of a grant or contract, whichever is later (45 CFR § 1635.3(c)).

The timekeeping system must be able to aggregate time record information from the time of implementation on both closed and pending cases by legal problem type (45 CFR § 1635.3(d)).

Suggested Audit Procedures

- Obtain an understanding of the recipient's timekeeping system in place to ensure compliance with the timekeeping requirements of this regulation. Interview both the executive director and the individual responsible for maintaining and tracking the timekeeping system.
- Determine how the recipient ensures that the timekeeping requirements are effectively communicated to staff and whether these requirements are followed in practice by staff. Interview a sample of recipient staff and review a sample of management's and staff's timesheets to assess compliance with the program's policy and this regulation.

***1636 CLIENT IDENTITY AND STATEMENT OF FACTS**

LSC Regulations

45 CFR §§ 1636.2, 1636.3, 1636.5

Compliance Requirement

For cases undertaken after April 25, 1996, the recipient must, prior to the initiation of litigation or settlement negotiations, prepare for each case in which it files a complaint in a court of law or institutes or participates in litigation against a defendant, or engages in pre-complaint settlement negotiations where the filing of a suit has been authorized by the plaintiff if negotiations fail, a dated written statement (in English and, if necessary, in another language which the plaintiff understands) signed by each plaintiff, enumerating the particular facts known to the plaintiff supporting the complaint. The recipient must identify each plaintiff by name in any complaint filed (or in a separate notice provided to the defendant against whom the complaint is filed where disclosure in the complaint would be contrary to law or court rules or practice) and identify each plaintiff it represents to prospective defendants in pre-litigation settlement negotiations, unless a court of competent jurisdiction has entered an order protecting the client from such disclosure based on a finding, after notice and an opportunity for a hearing on the matter, of

probable, serious harm to the plaintiff if the disclosure is not prevented (45 CFR §1636.2).

In the event of an emergency, where the recipient reasonably believes that delay is likely to cause harm to a significant safety, property or liberty interest of the client, the recipient may proceed with the litigation or negotiation without a signed statement of fact, provided that the statement is signed as soon as possible thereafter (45 CFR § 1636.2(c)).

Written statements of fact prepared in accordance with this part are to be kept on file by the recipient (45 CFR § 1636.3(a)). These may be kept in each client's file or in a central file, in accordance with the recipient's own system of recordkeeping.

Recipients must have written policies and procedures to guide their staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part (45 CFR § 1636.5).

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with the requirements of this regulation. Ascertain whether the recipient's written policies, procedures and recordkeeping are consistent with the provisions of this regulation.
- Determine how the recipient ensures that the written policies and procedures are communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any cases where the recipient failed to follow the requirements of this section. Follow up on all such possible occurrences.
- Ensure that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997. Adequately document this assessment in the workpapers.

- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler,** inspect cases filed in court after April 26, 1996 in order to determine whether a written statement of fact (prepared in accordance with this part) was obtained by the recipient prior to filing the lawsuit. **Adequately document this assessment in the workpapers.** Note that in each case where the recipient (1) files a complaint in a court of law or otherwise initiates or participates in litigation against a defendant, but does not identify the plaintiff(s) by name in the complaint or in a separate notice to the defendant against whom the complaint is filed, or (2) participates in pre-litigation settlement negotiations, but does not identify the plaintiff(s) it represents to prospective defendants, the recipient shall maintain in each such client's file, documentation indicating the reason, under §1636.2(a)(1), that such identification was not made. If, consistent with §1636.2, preparation and/or signing of the statement of facts is delayed because of an emergency, the recipient also shall maintain in the case file a statement of the nature of the emergency.

***1637 RESTRICTION ON LITIGATION ON BEHALF OF A PRISONER**

LSC Regulations

45 CFR §§ 1637.2, 1637.3, 1637.4, 1637.5

Compliance Requirement

After April 25, 1996, recipients may not participate in any civil litigation on behalf of a person incarcerated in a Federal, State or local prison⁵ (45 CFR § 1637.3). After August 29, 1996, recipients may not participate on behalf of such an incarcerated person in any administrative proceeding challenging the conditions of incarceration (45 CFR § 1637.3). "Incarcerated" means the involuntary physical restraint of a person who has been arrested for or convicted of a crime; "Federal, State or local prison" means any penal facility maintained under government authority (45 CFR 1637.2). (The specification of penal facility is meant to exclude any non-penal detention facility, such as a juvenile or mental health facility, even one housing the criminally insane, from the definition and,

consequently, to allow civil litigation on behalf of persons physically restrained in a mental health facility).

If, to the knowledge of the recipient, a client becomes incarcerated after litigation has commenced, the recipient must use its best efforts to withdraw promptly from the litigation, unless the client's period of incarceration is anticipated to be brief and the litigation is likely to continue beyond the period of incarceration (45 CFR § 1637.4).

Recipients must have written policies and procedures to guide their staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part (45 CFR § 1637.5).

Recipients may provide assistance to incarcerated individuals in court appointment

or as part of a separately funded public defender project or program.

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with the restrictions detailed in the regulation. Ascertain whether the recipient's written policies, procedures and recordkeeping are consistent with the provisions of the regulation.
- Determine how the recipient ensures that the written policies and procedures are communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the restrictions of this section. Follow up on all such possible occurrences.
- Ensure that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997. Adequately document this assessment in the workpapers.
- Obtain the list maintained by the recipient of all cases in which the recipient is representing incarcerated clients, in litigation or administrative proceedings challenging the conditions of incarceration. The auditor should be alert for continuing involvement in prohibited case activity previously reported by the recipient to LSC as having been fully divested.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.** Note that in each case where the recipient has knowledge that a person whom the recipient is representing in civil litigation has become incarcerated after the litigation commenced, the recipient shall include in the client's file either: (a) documentation evidencing the date of the recipient's notification of the client's incarceration, and the recipient's efforts to withdraw from the litigation; or (b) a statement detailing the reason(s) why the recipient anticipates that the period of incarceration is likely to be brief and the litigation is likely to continue beyond the period of incarceration.

***1638 RESTRICTION ON SOLICITATION**

LSC Regulations

45 CFR §§ 1638.2, 1638.3, 1638.4, 1638.5

Compliance Requirement

Recipients are prohibited from representing clients and referring individuals to other recipients as a result of unsolicited in-person advice. In-person unsolicited advice is a face-to-face encounter or a personal encounter via other means of communication (such as a personal letter or telephone call) advising the individual or client, who did not seek that advice or have an attorney-client relationship with the recipient, to obtain counsel or take legal action (45 CFR §§ 1638.2, 1638.3).

This part does not prohibit recipients or their employees from providing information regarding legal rights and responsibilities or providing information regarding the recipient's services and intake procedures through community legal education activities such as

outreach, public service announcements, maintaining an ongoing presence in a courthouse to provide advice at the invitation of the court, disseminating community legal education publications, and giving presentations to groups that request them (45 CFR § 1638.4(a)). Nor does it prohibit representation or referral of clients by recipients pursuant to a statutory or private ombudsman program that provides investigatory and referral services and/or legal assistance on behalf of persons who are unable to seek assistance on their own, including the institutionalized or physically or mentally disabled (45 CFR §1638.4).

Recipients must have written policies to implement the requirements of this part (45 CFR § 1638.5).

Suggested Audit Procedures

- Obtain an understanding of the written policies in place to ensure compliance with the requirements and restrictions in order to determine if the recipient's written policies are consistent with the provisions of this regulation.
- Determine how the recipient ensures that the policies are communicated to staff. Interview recipient staff as to their knowledge concerning the possible existence of any matter falling under the restrictions of this section. Follow up on all such possible occurrences.

***1639 WELFARE REFORM**

LSC Regulations

45 CFR §§ 1639.2, 1639.3, 1639.4, 1639.5, 1639.6

Compliance Requirement

Except as provided below, recipients may not initiate legal representation, or participate in any other way in litigation, lobbying or rulemaking, involving an effort to reform a Federal or State welfare system. Prohibited activities include participation in: (a) Litigation challenging laws or regulations enacted as part of an effort to reform a Federal or State welfare system; (b) Rulemaking involving proposals that are being considered to implement an effort to reform a Federal or State welfare system; © Lobbying before legislative or administrative bodies undertaken directly or through grassroots efforts involving pending or proposed legislation that is part of an effort to reform a Federal or State welfare system (45 CFR §1639.3).

The scope of the two definitions in this regulation is critical to its interpretation:

(a) *An effort to reform a Federal or State welfare system* includes all of the provisions, except for the Child Support Enforcement provisions of Title III, of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Personal Responsibility Act), 110 Stat. 2105 (1996), and subsequent legislation enacted by Congress or the States to implement, replace or modify key components of the provisions of the Personal Responsibility Act or by States to replace or modify key components of their General Assistance or similar means-tested

programs conducted by States or by counties with State funding or under State mandates;

(b) *Existing law* means Federal, State or local statutory laws or ordinances which are enacted as an effort to reform a Federal or State welfare system and regulations issued pursuant thereto that have been formally promulgated pursuant to public notice and comment procedures (45 CFR §1639.2).

Recipients may represent an individual eligible client who is seeking specific relief from a welfare agency if such relief does not involve an effort to amend or otherwise challenge existing law in effect on the date of the initiation of the representation (45 CFR § 1639.4).

Consistent with the provisions of § 1612.6(a) through (e), recipients may use non-LSC funds to comment in a public rulemaking proceeding or respond to a written request for information or testimony from a Federal, State or local agency, legislative body, or committee, or a member thereof, regarding an effort to reform a Federal or State welfare system (45 CFR § 1639.5).

Recipients must have written policies and procedures to guide their staff in complying with this part (45 CFR § 1639.6).

Suggested Audit Procedures

- Obtain an understanding of the written policies and procedures in place to ensure compliance with the requirements. Determine if the recipient's written policies and procedures are consistent with the provisions of the regulation.
 - Determine how the recipient ensures that the written policies and procedures are communicated to staff and whether these procedures are followed in practice by staff. Interview a sample of recipient staff as to their knowledge concerning the possible existence of any matter falling under the prohibitions of this section. Follow up on all such possible occurrences.
 - **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**
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*1642 ATTORNEYS' FEES

LSC Regulations

45 CFR §§ 1642.2, 1642.3, 1642.4, 1642.6

Compliance Requirement

Except as noted below, no recipient may claim or collect and retain attorneys' fees for any case filed after April 25, 1996 (45 CFR §1642.3).⁶

An attorneys' fee is an award to compensate an attorney of the prevailing party made pursuant to common law or Federal or State law permitting or requiring the awarding of such fees or a payment to an attorney from a client's retroactive statutory benefits (45 CFR §1642.2(a)).⁷ To claim attorneys' fees means to include a request for attorneys' fees in any pleading (45 CFR §1642.2(d)).⁸

Fees may be claimed and collected in a case filed prior to April 26, 1996, except that

fees may not be claimed and collected for any additional, related claim arising after April 25, 1996 in such a case. For the purposes of this restriction the following are not considered attorneys' fees and may be claimed and collected for cases filed after April 25, 1996: (1) fees in cases to which a court appoints a recipient or an employee of a recipient to provide representation in a case pursuant to a statute or a court rule or practice equally applicable to all attorneys in the jurisdiction, and in which the recipient or employee receives compensation under the same terms and conditions as are applied generally to attorneys practicing in the court in which the appointment is made; (2) payments made to a recipient or an employee of a recipient

pursuant to a grant, contract or other agreement by a governmental agency or other third party for representation of clients; (3) sanctions imposed by a court for violations of court rules, including Rule 11 or discovery rules of the Federal Rules of Civil Procedure, or similar State court rules; (4) reimbursement of costs and expenses from an opposing party or from a client pursuant to §1642.6.⁹ (45 CFR §§1642.2, 1642.3, 1642.4(a)).

The prohibition, with the exceptions listed above, on claiming or collecting and retaining attorney's fees applies also to private attorneys who receive compensation from the recipient to provide legal assistance to eligible clients under the recipient's private attorney involvement (PAI) program, judicare program, contract or other arrangement. However, the prohibition does not apply to private attorneys who undertake representation on a pro bono basis (45 CFR §1642.4(b)).¹⁰

Any attorneys' fees received by the recipient resulting from representation supported in whole or in part with LSC funds shall be allocated to the fund in which the recipient's LSC grant is recorded in the same proportion that the amount of LSC funds expended bears to the total amount expended by the recipient to support the representation (45 CFR § 1642.5(a)). Attorneys' fees shall be recorded during the accounting period in which the money from the fee award is actually received by the recipient and may be expended for any purpose permitted by the LSC Act, regulations and other law applicable at the time the money is received (45 CFR § 1642.5(b)).

Recipients must have written policies and procedures to guide their staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this regulation (45 CFR § 1642.7).

Suggested Audit Procedures

- Obtain an understanding of the written policies, procedures and recordkeeping in place to ensure compliance with the regulation. Determine if the recipient's written policies, procedures and recordkeeping are consistent with the provisions of the regulation.
- Ensure that the mandatory recordkeeping requirements impacting this regulation are in place in accordance with the Office of Program Operations' memo to all LSC Program Directors dated December 8, 1997. Adequately document this assessment in the workpapers.
- Verify, on a test basis, that the cases or circumstances in which fees or payments were received were allowable pursuant to 45 CFR § 1642.4 and including, if applicable, the interpretive guidance provided in Program Letter 97-1. **As part of its recordkeeping system, the recipient shall maintain a separate file that identifies all attorneys' fees received.** In accordance with §1642.2(b)(1), for each case in which a recipient receives compensation for representation in a case where the recipient or an employee of a recipient has been appointed to provide the representation pursuant to statute or court rule or practice of equal applicability to all attorneys in the jurisdiction, the recipients shall include in the client's file copies of the court order directing that the recipient or employee of the recipient

provide representation in the case and a copy of the statute or court rule that permits such appointment. If the appointment was made orally or was subject to an unwritten practice, the recipient should include an appropriate written description of the appointment or practice, as the case may be.

- Review and test method of allocating fees and related expenses associated with fee-generating cases to the various funds. Verify that the fees were recorded in the same fund to which the related expenditures were charged as required by 45 CFR §1642.5(a).
- Interview the executive director and a sample of recipient attorney staff about the requirements of 45 CFR § 1642 and inquire as to their knowledge of any instances in which fees were received by the recipient but not recorded in the accounting records. Follow-up on all such possible occurrences.
- Verify that fees awarded to a recipient were not recorded as revenue until received as required by 45 CFR §1642.5(b). For each case in which a recipient receives an award of attorneys' fees as defined in §1642.2, the recipient shall include in the accounting records documentation indicating that the case was filed prior to April 26, 1996.

***1643 RESTRICTION ON ASSISTED SUICIDE, EUTHANASIA, AND MERCY KILLING**

LSC Regulations

45 CFR §§ 1643.3, 1643.4, 1643.5

Compliance Requirement

No recipient may use LSC funds to assist in, support, or fund any activity or service which has a purpose of assisting in, or to bring suit or provide any other form of legal assistance for the purpose of: (a) securing or funding any item, benefit, program, or service furnished for the purpose of causing, or the purpose of assisting in causing, the suicide, euthanasia, or mercy killing of any individual; (b) compelling any person, institution, or governmental entity to provide or fund any item, benefit, program, or service for such

purpose; or (c) asserting or advocating a legal right to cause, or to assist in causing, the suicide, euthanasia, or mercy killing of any individual (45 CFR § 1643.3).

Recipients shall adopt written policies to guide their staff in complying with this part and shall maintain records sufficient to document the recipient's compliance with this part (45 CFR § 1643.5).

Suggested Audit Procedures

- Obtain an understanding of the written policies and recordkeeping in place to ensure compliance with the regulation. Determine if the recipient's written policies and recordkeeping are consistent with the provisions of the regulation.
 - **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with this regulation. Adequately document this assessment in the workpapers.**
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***1644 DISCLOSURE OF CASE INFORMATION**

LSC Regulations

45 CFR §§ 1644.3, 1644.4, 1644.5

Compliance Requirement

For each case filed in court by its attorneys on behalf of a client of the recipient after January 1, 1998, a recipient shall disclose, in accordance with the requirements of this part, the following information: (1) the name and full address of each party to a case; (2) the cause of action; (3) the name and full address of the court where the case is filed; and (4) the case number assigned to the case by the court (45 CFR § 1644.4(a)). Recipients shall provide the information required in § 1644.4(a) to LSC in semiannual reports in the manner specified by LSC. Recipients may file such reports on behalf of their subrecipients for cases that are filed under subgrants (45 CFR § 1644.4(b)). Upon request, a recipient shall make the information required in § 1644.4(a) available in written form to any person (45 CFR § 1644.4(c)).

The case disclosure requirements of this part apply: (1) to actions filed on behalf of plaintiffs or petitioners who are clients of a

recipient; (2) only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient was not the attorney of record in the case below and the recipient's client is the appellant; (3) to a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and (4) to cases filed pursuant to subgrants under 45 CFR Part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement (PAI) activities under Part 1614 of these regulations. (This Part does not apply to any cases filed by private attorneys as part of a recipient's PAI activities pursuant to Part 1614 of these regulations.) (45 CFR §§ 1644.3(a) and (b))

Each recipient shall adopt written policies and procedures to implement the requirements of this Part (45 CFR § 1644.5).

Suggested Audit Procedures

- Obtain an understanding of the written policies and procedures in place to ensure compliance with the regulation. Determine if the recipient's written policies and procedures are consistent with the provisions of the regulation.
- Program Letter 98-5 provides guidance as to the timing and format of the semiannual case disclosure reports required by this regulation. These reports must be submitted by the recipient to LSC on the sample form provided by LSC or on other forms containing the same information requested by LSC. **Ensure that these reporting requirements are in place and that the semiannual case disclosure reports have been properly prepared and submitted to LSC on a timely basis in accordance with Program Letter 98-5.** Verify, on a test basis, the information contained in the semiannual case disclosure reports. Document this review in the workpapers.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, be alert for any cases that may fall under the reporting requirements of this regulation that have not been included in the semiannual case disclosure reports. Follow up on and document all such exceptions in the workpapers.**

*OTHER STATUTORY PROHIBITIONS

Section 1007(b)(8) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution.

Section 1007(b)(9) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school

system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities.

Section 1007(b)(10) of the LSC Act prohibits the use of LSC funds to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior law.

Public Law 104-134

Abortion

SEC. 504. (a) None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity (which may be referred to in this section as a "recipient")

(14) that participates in any litigation with respect to abortion

Interim Guidance on Compliance Requirement

This provision applies the previously existing statutory prohibition to all funding. The restriction in the Act, Section 1007(a)(8), prohibiting all legal assistance (not just litigation) concerning the procurement of non-therapeutic abortions, continues subject to 45 CFR §§ 1610.2 and 1610.3.

Suggested Audit Procedures

- Obtain an understanding of the policies, practices and internal controls in place to ensure compliance with the statutory prohibitions identified above.
- **In conjunction with the review of the sampled case files, and including discussions with the appropriate case handler, assess compliance with these statutory prohibitions. Adequately document this assessment in the workpapers.**

OTHER COMPLIANCE REQUIREMENTS

Accounting Requirements

Recipients are required to adhere to requirements of the Accounting Guide for LSC Recipients (August 1997) including LSC's "Fundamental Criteria of an Accounting and Financial Reporting System."¹¹ This Accounting Guide sets forth financial accounting and reporting standards for

recipients of LSC funds, and describes the accounting policies, records, and internal control procedures to be maintained by recipients to ensure the integrity of accounting, reporting and financial systems.

Property Management Requirements

The recipient must maintain a property management system for its LSC-funded activities that is adequate to meet the standards of the Corporation's Property Management Manual and the Accounting Guide for LSC Recipients (August 1997).¹²

Suggested Audit Procedures

- Determine whether the recipient maintains proper records for and adequately safeguards property:
 - a. Obtain an understanding of the recipient's policies and procedures for property management and ascertain if they are in accordance with LSC's Property Management Manual and the Accounting Guide for LSC Recipients (August 1997);
 - b. Select a sample of property transactions and test for adherence to LSC's Property Management Manual and the Accounting Guide for LSC Recipients (August 1997);
 - c. Inquire if a physical inventory of property purchased with LSC funds has been taken recently and, if applicable, test whether any differences between the physical inventory and property records were resolved;
 - d. Identify property acquired with LSC funds during the audit period and trace selected purchases to the property records (Verify that the property records contain the following information about the property: description, including model and serial number or other identification number; source of funds used for acquisition; inventory control number; acquisition date and cost; location; useful life; and, if applicable, date of disposal and sales price); and
 - e. Select a sample of property acquired with LSC funds from the property records and physically inspect the property, including ascertaining whether it is appropriately safeguarded.
- Determine the amount of property dispositions for the audit period and verify that dispositions were properly classified between property acquired with LSC funds and property otherwise acquired.

Grant Award Requirements

The grant award document(s) may have special terms and conditions that should

be considered during the audit. Auditors should determine the significant compliance

requirements from the grant document, and

develop audit procedures to test compliance with those requirements.

END NOTES

1. Memorandum from John A. Tull, Director, Office of Program Operations, to all LSC Program Directors regarding "Recordkeeping Requirements" (Dec. 8 1997).
2. "Tribal funds" means funds received from an Indian tribe or from a private nonprofit foundation for the benefit of Indians or Indian tribes (45 CFR §1610.2(h)). This definition under the regulation is slightly broader than the definition found in the LSC Act.
3. If a recipient has a claim for attorneys' fees in a class action filed before April 26, 1996 for work done before August 1, 1996, participation limited to pursuit of such attorneys' fees does not violate this restriction.
4. Prior to April 26, 1996, recipients could use public, IOLTA or tribal funds for redistricting litigation, if the use of funds for such activity was consistent with the purpose for which such funds were provided. Recipients may still use tribal funds for this purpose, if consistent with the purpose for which such funds were provided.
5. Public Law 104-134, permitted recipients to divest themselves of certain prohibited cases including litigation on behalf of incarcerated persons between April 26, 1996 through August 1, 1996. Thus, recipients could still participate during this period in litigation on behalf of incarcerated persons if the litigation was pending on April 26, 1996, while attempting to divest themselves of such lawsuits.
6. Because this prohibition gives rise to complex and difficult issues, LSC issued Program Letter 97-1 on August 7, 1997 to further explain these issues. Auditors should consult this Program Letter for guidance when it is unclear if a recipient's conduct is consonant with 45 CFR 1642.
7. The language at the end of this subsection, "or a payment to an attorney from a client's retroactive statutory benefits" was added in the final regulation and relates to fees in Social Security cases paid to an attorney which come out of a client's retroactive social security benefits. Such fees may be collected until June 11, 1997 (the effective date of the final regulation). Furthermore, §4 of Program Letter 97-1 provides that after June 11, 1997, a recipient may redirect such fees to the client and, if necessary, receive a check for the payment and, without depositing it, sign it over to the client, while retaining clear documentation of such transaction.
8. Program Letter 97-1 discusses several issues related to the extent of the prohibition on "claiming" fees:
 - 1) The prohibition on claiming attorneys' fees extends to a claim "on behalf of the client", but the recipient will not be sanctioned or required to take remedial action if the claim was made before August 7, 1997 and no further action to claim was taken after that date; however, the recipient may not receive any portion of such attorney fees. (See §2 of the Program Letter).
 - 2) The recipient may not assert its professional responsibility under §10.06(b)(3) of the LSC Act as a basis to claim attorney fees because it believes the failure to assert such a claim may jeopardize the client's interest in the case. In such instance, it must take necessary action under the Rules of Professional Responsibility, such as either declining the case or disclosing this limitation on its representation to the client and accepting the case with the client's approval of this limitation. (See §7 of the Program Letter).
 - 3) In the particular instance where a program is under contract with a state agency to seek attorneys' fees on behalf of the state pursuant to a statutory mandate in child support cases, the recipient may seek the fees and turn them over to the state because it is acting as an agent of the state. In any apparently similar situation, a recipient should seek LSC guidance regarding whether the attorneys' fees restriction applies. (See §6 of the Program Letter).
9. Other than these exceptions, the scope of the prohibition on collecting attorneys' fees is broad. Its scope is further elucidated in §§3 and 5 of Program Letter 97-1.

1) §3 - It extends to a court award of attorneys' fees where none had been claimed, but the recipient will not be sanctioned or required to take remedial action if the fees were received before August 7, 1997.

2) §5 - A recipient is not permitted to bypass the restriction by assigning fees for cases filed after April 25, 1996 to a third party.

10. When a program co-counsels with a pro bono attorney, the private pro bono counsel may claim fees, but only for his or her own work. Any such claim must not be a general claim, but rather one specifically on behalf of the co-counsel only. Because of the difficulty of this issue, Program Letter 97-1, §1 provides that this interpretation shall be prospective from August 7, 1997 as to the form of the claim. However, the program may not collect any such fees.

11. The Accounting Guide for LSC Recipients (August 1997) became effective on August 14, 1997, replacing all accounting portions of both the 1981 and 1986 Audit and Accounting Guide. Prior to this date, recipients were required to adhere to accounting requirements of the LSC Audit and Accounting Guide for Recipients and Auditors, and could follow either the 1981 or 1986 version. LSC's "Fundamental Criteria of an Accounting and Financial Reporting System" was incorporated in Chapter III of the 1986 version of the Audit and Accounting Guide but was also required to be adhered to by users of the 1981 version of the Audit and Accounting Guide. The audit provisions of the 1981 and 1986 versions of the Audit and Accounting Guide were superseded by the LSC Audit Guide, originally adopted in 1995 and revised in 1996.

12. The Accounting Guide for LSC Recipients (August 1997) became effective on August 14, 1997, replacing all accounting portions of both the 1981 and 1986 Audit and Accounting Guide. Prior to this date, recipients were required to adhere to accounting requirements of the LSC Audit and Accounting Guide for Recipients and Auditors (either the 1981 or 1986 version).